

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MM PROTON I, LLC.,

Plaintiff,

v.

YORY LLC. and CYCLE THERAPY NYC INC.,

Defendants.

No. 17-CV-10102

**DECLARATION OF MICHAEL GUTNICK IN SUPPORT OF PLAINTIFF'S MOTION
FOR A PRELIMINARY INJUNCTION**

Michael Gutnick affirms that the following is true under penalties of perjury:

1. I am the President of New York Proton Center, LLC ("NYPC"), a not-for-profit consortium of leading New York Medical Centers ("Medical Centers"), which will sub-lease from New York Proton Management, LLC ("NYPM") the proton therapy center (the "Proton Center") being built by MM Proton I, LLC ("MM Proton").
2. I am also the Executive Vice President and Chief Financial Officer of Memorial Sloan Kettering Cancer Center ("MSK"). MSK is the largest private cancer center in the world. We treat approximately 23,000 cancer patients on an in-patient basis (for a total of approximately 160,000 "patient days"). We provide approximately 123,000 radiation treatments per year. The above figures do not include the many thousands of cancer patients treated by the other members of the consortium of leading Medical Centers that are members of NYPC.
3. I have personal knowledge of the facts stated in this declaration, and am competent to testify regarding these facts at trial.

4. NYPC and its members have a critical need for a proton treatment facility in New York to treat critically ill children and adult patients with cancers in sensitive areas of the body that are subject to significant damage from conventional radiation. NYPC will use the Proton Center being constructed by MM Proton to provide currently unavailable critical care to cancer patients in the New York metropolitan area.

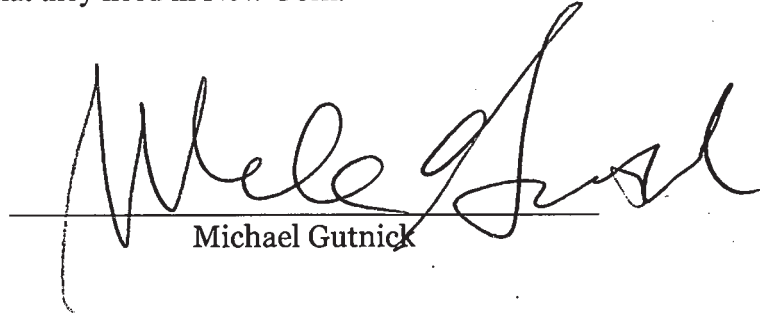
5. The New York Department of Health has also recognized that proton beam therapy in this Center will treat a number of relatively rare cancers and tumors in areas of the body such as the brain, neck, eyes, heart and spine, without causing collateral damage to surrounding tissues. These cancers and tumors are not amenable to surgery and conventional forms of radiation, leading to dire outcomes in many cases.

6. When it opens, presently scheduled for early 2019, the Proton Center will be the only such facility providing proton beam therapy in New York State. There is no other alternative for patients who, due to family obligations, or lack of time or lack of financial resources, are not able to travel and stay for two months (the typical duration of treatment) in another part of the country.

7. The number of patients who will benefit from the Proton Center is not speculative. The Center is designed to treat 125 patients per day. We have projected, based on our current business described above, that NYPC's needs for access to proton therapy treatment will equal or exceed 125 treatments per day.

8. The Proton Center building is scheduled to be completed and obtain its Certificate of Occupancy on May 4, 2018. Between that date and the projected opening in early 2019, MM Proton and equipment contractors will complete installation of necessary medical equipment and

other internal construction. For every day that the Proton Center is delayed in opening (which is contingent on obtaining its Certificate of Occupancy), 125 patients will be deprived of the critical life-saving care that they need in New York.



Michael Gutnick